

SEP 1 0 2008

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

PRE-MUR: 470  
DATE RECEIVED: April 23, 2008  
DATE ACTIVATED: May 13, 2008

EXPIRATION OF SOL: March 5, 2006 to  
October 29, 2012<sup>1</sup>

**SOURCE:**

*Sua Sponte* Submission by National Republican  
Congressional Committee (Pre-MUR 470)

**RESPONDENTS:**

National Republican Congressional Committee and  
Keith Davis, in his official capacity as treasurer;

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 432(b)  
2 U.S.C. § 432(c)  
2 U.S.C. § 434(b)  
2 U.S.C. § 437g(a)(5)(B)  
11 C.F.R. § 102.15  
11 C.F.R. § 104.3(a)(1)  
11 C.F.R. § 104.3(b)  
11 C.F.R. § 104.14(d)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

<sup>1</sup> We are not yet able to assign a precise range for the statute of limitations dates because we do not yet know the precise dates of the potential violations. The NRCC submitted a list of "apparently unauthorized" disbursements that were previously unreported on the Committee's monthly disclosure reports. These disbursements began in March 2001 and ended in October 2007.

**I. INTRODUCTION**

Pre-MUR 470 is a *sua sponte* submission filed by the National Republican Congressional Committee ("NRCC" or "the Committee") and Keith Davis, in his official capacity as treasurer, regarding possible campaign finance violations. Information contained in the NRCC's April 23, 2008 *sua sponte* submission and additional materials submitted by the NRCC on June 20, 2008 (the "Covington & Burling Investigation Summary") allege that the NRCC's former treasurer, Christopher Ward, made unauthorized disbursements totaling approximately \$725,000 of NRCC funds, in violation of the Federal Election Campaign Act of 1971, as amended ("the Act").

Based on the available information, we recommend that the Commission find reason to believe that the National Republican Congressional Committee and Keith Davis, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c) and 434(b).

As discussed below, an investigation is necessary to determine the full extent of misreporting by the NRCC.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

Christopher Ward worked at the NRCC starting in November 1995, served as the NRCC's long-time comptroller, was the treasurer of NRCC from 2003 through July 2007, and was a consultant for the NRCC from August 2007 until his termination in January 2008. NRCC *Sua Sponte* Submission at 1-2. The NRCC discovered the alleged embezzlement on January 28, 2008 when Ward informed the NRCC that there had been no audit of the Committee for the year 2006. *Id.* at 2. Ward's consultancy was terminated that same day. *Id.* The NRCC then discovered that Ward fabricated a draft final audit report and submitted false 2006 financial statements to the NRCC's bank, and had been forging outside audit reports for several years. *Id.* As a result, the NRCC retained outside counsel, reported the matter to the FBI and the Commission, and hired PricewaterhouseCoopers to conduct a forensic audit of the NRCC's financial records. *Id.*

#### 1. Embezzlement and False Reporting

During the course of an internal investigation, the NRCC learned that after becoming treasurer in 2003, Ward submitted false audit reports to the NRCC's bank for the years

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1 2002-2006.<sup>2</sup> NRCC *Sua Sponte* Submission at 2. The NRCC's submission also states that it  
2 appears likely that Ward made several hundred thousand dollars in unauthorized wire transfers of  
3 NRCC funds to outside committees whose bank accounts Ward had access to, \_\_\_\_\_

4 \_\_\_\_\_ It appears that Ward subsequently made transfers from those  
5 accounts to his personal or business bank accounts. *Id.* The NRCC also discovered that there are  
6 numerous instances in which the unauthorized transfers were not accurately reported, or not  
7 reported at all, on the NRCC's disclosure reports. *Id.*

8 The NRCC's initial investigation also revealed that it likely had inaccurately disclosed its  
9 cash on hand as a result of Ward's unauthorized transfers. NRCC *Sua Sponte* Submission at 2.  
10 At year-end 2006, the NRCC's actual cash on hand was approximately \$990,000 less than the  
11 amount disclosed in its FEC reports. *Id.* at 3. The actual cash on hand for the January 2008  
12 monthly report (filed February 20, 2008) was approximately \$740,000 less than what was  
13 disclosed. *Id.* The committee has also learned that the amount disclosed as outstanding on its  
14 line of credit was \$200,000 less than the amount actually owed. *Id.*

15 On June 20, 2008 the NRCC provided us with Covington & Burling's summary of the  
16 audit conducted by PricewaterhouseCoopers. The NRCC did give us the audit report itself. The  
17 document provided largely restated information contained in the Committee's original *sua sponte*  
18 submission and press articles. It reported that the total estimated loss to the NRCC was  
19 approximately \$725,000, \_\_\_\_\_

<sup>2</sup> According to news articles, the former head of the NRCC Oversight Committee, Rep. Greg Walden, stated that he had sought a meeting with the outside auditors (Deloitte & Touche, LLP) but that Ward always had a seemingly legitimate reason why the meeting did not happen. Paul Kane, *NRCC Says Ex-Treasurer Diverted up to \$1 Million*, WASHINGTON POST (March 14, 2008). Rep. Walden stated that the false audit reports were almost perfect forgeries. *Id.*

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\_\_\_\_\_ and that Deloitte and Touche, LLP never completed an audit of the 2002 fiscal year. Covington & Burling Investigation Summary at 2-3. The document also confirmed that Ward's unauthorized transfers were either not reported or inaccurately reported in the NRCC's reports to the Commission. Covington & Burling Investigation Summary at 3.

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**B. Legal Analysis**

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**1. NRCC's Liability**

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Although the NRCC's failure to accurately report disbursements stems from Christopher Ward's alleged embezzlement scheme, the NRCC nevertheless violated the Act when it filed the resulting inaccurate reports. Committees, through their treasurers, are required to disclose disbursements and cash-on-hand balances accurately. See 2 U.S.C. § 434(b)(1), (4) and

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1 (6)(B)(v); 11 C.F.R. § 104.3(a)(1) and (b). Committee treasurers are responsible for the timely  
2 and complete filing of disclosure reports and for the accuracy of the information contained  
3 therein. See 11 C.F.R. § 104.14(d). Under the Act, a committee, through its treasurer, is also  
4 required to keep an accurate account of receipts and disbursements. See 2 U.S.C.  
5 §§ 432(c)(5), 434(b)(2), (3), (4), and (6) and 11 C.F.R. § 104.3(b). The Commission has held  
6 committees responsible for failure to file accurate reports even when the submission of  
7 inaccurate information is due to embezzlement by committee staff. See, e.g., MUR 5610 (Dole  
8 North Carolina Victory Committee).

9 When determining committee liability, the Commission has examined whether the  
10 embezzlement resulted from the failure to implement adequate internal control procedures over  
11 committee finances (e.g., regular audits, controls procedures over receipts and disbursements,  
12 segregated duties, or periodic review of finances). See MUR 5923 (American Dream PAC);  
13 MUR 5920 (Women's Campaign Fund); MUR 5872 (Jane Hague for Congress); MUR 5721  
14 (Lockheed Martin Employee's PAC); MUR 5811 (Doggett for U.S. Congress); MUR 5812 (Ohio  
15 State Medical Association PAC); MUR 5813 (Georgia Medical PAC); and MUR 5814 (Lamutt  
16 for Congress). In the *Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement*,  
17 the Commission stated that it would not seek a monetary penalty against a committee for filing  
18 inaccurate reports due to embezzlement if the committee had certain minimal internal controls in  
19 place at the time of the embezzlement and the committee took certain steps after discovering the  
20 embezzlement. 72 Fed. Reg. 16,695 (April 5, 2007). In order to determine the NRCC's liability  
21 in this matter, we will need to know more about the internal controls the committee had in place  
22 at the time of the alleged embezzlement.

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1       The information available thus far suggests that the NRCC may not qualify for the self-  
2 reported embezzlement safe harbor. The NRCC claims that it had unspecified internal controls  
3 in place that are similar to those listed in the safe harbor. NRCC *Sua Sponte* Submission at  
4 page 4, note 2, and page 5. However, it appears that at least two (and likely more) of the  
5 minimum internal controls specified in the safe harbor, dual signature requirements for wire  
6 transfers and monthly reconciliation of bank statements for unauthorized transactions, were not  
7 in place at the NRCC at the time of Ward's embezzlement. According to NRCC's *sua sponte*  
8 submission and the Covington & Burling Investigation Summary, Ward may have accomplished  
9 his embezzlement by single-handedly executing hundreds of thousands of dollars of wire  
10 transfers from the NRCC's accounts. The NRCC stated that it has now instituted a new  
11 requirement that wire transfers require confirmation by a second individual. NRCC *Sua Sponte*  
12 Submission at 4-5; Covington & Burling Investigation Summary at 3. New procedures for  
13 periodic bank reconciliation may also be implemented. NRCC *Sua Sponte* Submission at 5;  
14 Covington & Burling Investigation Summary at 4. The NRCC *sua sponte* submission indicates  
15 that Ward conducted bank reconciliations for years when he served as comptroller to the NRCC  
16 and presented the results to the Committee's treasurer. Once Ward became treasurer himself, the  
17 reconciliations became less frequent. NRCC *Sua Sponte* Submission at 5, note 5.

18       There has been some suggestion that the NRCC had stricter internal financial controls in  
19 place in the past but reduced some of these controls in order to give staffers more freedom to  
20 quickly spend money in the heat of campaign season. For example, according to one news  
21 article, rules that required the NRCC Executive Committee to approve expenditures over  
22 \$10,000 were reportedly waived, various department budgets were merged, and a prohibition

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1 against staffers having outside employment was repealed. Josh Bresnahan and Patrick  
2 O'Connor, *GOP Sources Cite Lax Controls at NRCC*, POLITICO (February 26, 2008),  
3 <http://www.politico.com/news/stories/0208/8691.html>. One reportedly pivotal change was the  
4 departure of the NRCC's former treasurer, Donna Anderson, who oversaw NRCC's accounting,  
5 followed by the elevation of Ward to treasurer. *Id.* Ward was also able to establish a consulting  
6 business, Political Compliance Services, and serve as treasurer to numerous other committees,  
7 through which he allegedly diverted the funds of NRCC and his other clients. *Id.* Although at  
8 one time no individual could single-handedly authorize the wire transfer of money from one  
9 account into another, Ward eventually became the only NRCC official empowered to use wire  
10 transfers without a second person's approval. *Id.*

11 Therefore, there is reason to investigate whether the embezzlement resulted from a lack  
12 of internal controls. Accordingly, we recommend that the Commission find reason to believe  
13 that the National Republican Congressional Committee and Keith Davis, in his official capacity  
14 as treasurer, violated 2 U.S.C. §§ 432(c) and 434(b) by misreporting due to the embezzlement of  
15 its treasurer, Christopher Ward.

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2 \_\_\_\_\_ We recommend formal discovery be authorized, to be used if needed, to  
3 ensure the efficient, accurate, and complete discovery of the information required to resolve this  
4 matter.

5 **IV. RECOMMENDATIONS**

- 6 1. Open a MUR as to Pre-MUR 470.  
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8 2. \_\_\_\_\_  
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10 3. \_\_\_\_\_  
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12 4. Find reason to believe that the National Republican Congressional Committee and  
13 Keith Davis, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c) and  
14 434(b).  
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16 5. \_\_\_\_\_  
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19 6. Approve the attached Factual and Legal Analyses.  
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21 7. Authorize the use of compulsory process.  
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23 8. Approve the appropriate letters.  
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27 Thomasenia P. Duncan  
28 General Counsel

Date

7/10/08

BY:

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32 Ann Marie Terzaken  
33 Associate General Counsel  
34 for Enforcement  
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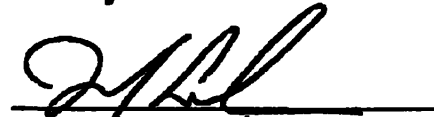
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